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PAGE 1/25 \* RCVD AT 3/13/2006 2:14:41 PM [Eastern Standard Time] \* SVR:USPTO-EFXRF-6/26 \* DNI:2738300 \* CSID:13123214299 \* DURATION (mm:ss):07-08

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**FACSIMILE COVER SHEET**

Date: March 13, 2006

To: Office of Petitions, USPTO  
Fax No: 571-273-8300From: Amanda M. Miller  
Tel. No: 312-321-4787

Client No: 659

No. of Pages  
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**COVER MESSAGE:**

RE: U.S. Patent Application Serial No. 09/872,976  
Title: FULL WRAPPING DISPOSABLE REFASTENABLE AND  
ADJUSTABLE PANT  
Filing Date: May 31, 2001  
Inventors: Datta et al.

Please sign or stamp this cover letter and return to 312-321-4299 attn: Amanda M. Miller.

Amanda M. Miller  
312-321-4787  
E-mail amiller@usebrinks.com



March 13, 2006

Office of Petitions  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Re-filing Petition Under 37 C.F.R. § 1.181  
Appln. No. 09/872,976

Dear Sirs:

On November 21, 2003 Applicants filed a petition under 37 C.F.R. § 1.181. On November 29, 2004, Applicants' attorney, Rasbida Y.V. MacMurray contacted the Examiner in this case to discuss its status. An interview summary of this conversation was submitted on December 7, 2004. The public Pair system marked this file "Lost" on January 3, 2005. On October 4, 2005 Applicants' attorney, Amanda M. Miller, contacted the Director's office to discuss the status of the petition and was told that the file had been located and that a decision would be forthcoming. The file was marked "found" on the PAIR system on October 28, 2005. On March 13, 2006, Applicants' attorney, Amanda M. Miller, again contacted the director's office and the petitions branch to inquire about the status of the petition. We understand that this application is a paper file and that it is now located in tech center 3700. However, it does not appear that a copy of the petition is located in this file. Therefore, attached you will find a copy of the petition filed on November 21, 2003 and the return postcard evidencing receipt of such on November 24, 2003.

We ask that this petition be entered in to the file and that appropriate action be taken on the petition. If you should need to contact me, please feel free to do so at 312-321-4787.

Kindest Regards,

*Amanda M. Miller*  
Amanda M. Miller

AMM/ch

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MAR 13 2006

TRANSMITTAL LETTER			Case No. 659-829
Serial No. 09/872,976	Filing Date May 31, 2001	Examiner Karin M. Reichle	Group Art Unit 3781
Inventor Paul J. Datta et al.			
Title of Invention Full Wrapping Disposable Refastenable and Adjustable Pant			

## TO THE COMMISSIONER FOR PATENTS

Transmitted herewith is Petition under 37 CFR § 1.181; white postcard evidencing receipt of same.

Small entity status of this application under 37 CFR § 1.27 has been established by verified statement previously submitted.

Applicant claims small entity status. See 37 CFR 1.27.

Petition for a    month extension of time.

No additional fee is required.

The fee has been calculated as shown below:

					Small Entity		Other Than Small Entity	
		Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	Rate	Add'l Fee
Total		Minus			x \$9 =		x \$18 =	
Indep.		Minus			x 43 =		x \$86 =	
First Presentation of Multiple Dep. Claim					+ \$145 =		+ \$290 =	
					Total add'l fee	\$	Total add'l fee	\$0

Please charge Deposit Account No. 23-1925 (BRINKS HOFER GILSON & LIONE) in the amount of \$ \_\_\_\_\_. A duplicate copy of this sheet is enclosed.

A check in the amount of \$ \_\_\_\_ to cover the two-month extension of time fee is enclosed.

The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this communication or credit any overpayment to Deposit Account No. 23-1925. A duplicate copy of this sheet is enclosed.

I hereby petition under 37 CFR § 1.136(a) for any extension of time required to ensure that this paper is timely filed. Please charge any associated fees which have not otherwise been paid to Deposit Account No. 23-1925. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

Rashida Y.V. MacMurray  
Registration No. 50,399  
Attorney for Applicants  
Customer No. 00757 - Brinks Hofer Gilson Lione

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to:  
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 21, 2003

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Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

on November 21, 2003

Date of Deposit

Rashida Y.V. MacMurray, Reg. No. 50,399

Name of applicant, assignee or

Registered Representative

Rashida Y. MacMurray

Signature

November 21, 2003

Date of Signature

Our Case No. 659-829

KC Ref. 14.104-1

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
Paul J. Datta et al.	)	
Serial No. 09/872,976	)	Examiner: Karin M. Reichle
Filing Date: May 31, 2001	)	Group Art Unit No. 3761
For FULL WRAPPING DISPOSABLE	)	
REFASTENABLE AND	)	
ADJUSTABLE PANT	)	

### Petition under 37 CFR § 1.181

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Dear Sir:

This petition filed under 37 C.F.R § 1.181 is in response to the Advisory Action mailed on September 23, 2003. Applicants respectfully request that the Examiner's comments and objections in the Advisory Action be withdrawn, stricken or otherwise corrected on the basis that they are legally and factually erroneous and go beyond the Examiner's scope of authority.

### Summary of Prosecution

This case has been pending since the filing of its parent cases in December of 1998. During these almost five years, Applicants have been presented with what can fairly be described as obstruction from the Examiner, rather than the thoughtful and thorough examination that all inventors are entitled to, and ordinarily receive from the Patent and Trademark Office. On several occasions the Examiner has abandoned her role as an Examiner, instead pretending to be the inventor and calling upon Applicants to change and alter the nature of their invention to suit the Examiner's view. The Examiner has also made numerous and at times contradictory objections and comments in the record that have no basis either under Title 35 of the U.S. Code or Title 37 of the C.F. R.

The Examiner's comments and objections appear to stem from a fundamental lack of understanding of the law, the technology and the duties of a patent examiner. In reviewing the public records of the PTO it appears that the present Examiner has only issued 16 patents in the last year and a half. On the other hand, it appears that other examiners in this art group have issued from 75 to well over 100 patents in the same time period. This drastic difference in the performance of the present Examiner from her peers provides circumstantial evidence as to this Examiner's failings and obstructionist practices.

The Examiner issued a final rejection of pending claims 1-14 on July 1, 2003, which also contained many legally and factually erroneous comments and objections. In response, Applicants filed an amendment and response (which was entered) to the Examiner's final rejection on August 29, 2003. The Examiner filed an Advisory Action on September 23, 2003 maintaining many of her comments and objections, adding new comments and objections, and repeating her basis for rejections of claims 1-14.

Applicants have filed a notice of appeal as to the rejections, i.e., those matters relating to patentability, and will be submitting its brief in support of that appeal in due course. Applicants, however, also desire to have the Examiner's inaccurate and unfounded comments and objections corrected. Although these comments and objections have no relationship to patentability, because they are void of any basis in the patent laws, they nevertheless cloud the prosecution history and have the potential to create unforeseen issues and mischief with respect to Applicants' rights in this and later

continuing cases. Thus, Applicants have filed the present petition to remove this cloud that the Examiner's shortcomings have placed over the present case.

### **1. Claim of Priority to '951 Application**

The Examiner's challenges to Applicants' claim of priority have no basis in law or fact. As set forth below in detail, Applicants claimed priority to three co-pending cases (the '865 application, the '866 application, and the '951 application), which cases were each filed on December 18, 1998.

Nevertheless, throughout the course of this prosecution the Examiner has repeatedly raised inaccurate and incorrect challenges to Applicants' claim to priority. On each occasion Applicants were forced to go through the time and expense to rebut the Examiner's assertions. After successfully rebutting these assertions, however, the Examiner came back with a new and different basis to challenge Applicants' priority claim. It is respectfully submitted that a review of this record shows an examiner who was predisposed to challenging Applicants' priority claim and would not relinquish this improper predisposition. (Attached hereto as Exhibit A is a compendium of the Examiner's comments and Applicant's response thereto on this issue).

The Examiner has now acknowledged that Applicants are entitled to the December 18, 1998 filing date of their parent applications. In the Advisory Action, however, the Examiner has made comments and objections to Applicants' claim of priority to one of its three parent cases, the '951 application. These assertions are legally and factually erroneous and should be withdrawn and/or stricken from the record.

Each of the three parent applications to which the Applicants claim priority is expressly incorporated by reference into the disclosure of the present application. Furthermore, each of the parent applications expressly incorporates the disclosure from the other parent applications. Hence, parent application '865 expressly incorporates parent application '866 and parent application '951 by reference. ('865 application at p. 3, lines 5-15). Similarly, parent application '866 expressly incorporates application '951 by reference. ('866 application at p. 12, lines 6-9). All three parent applications stand on equal footing and Applicants are entitled to claim the benefit of priority to all three of them. See

*Ex Parte Maziere*, 27 U.S. P. 2d 1705, 1706-07 (Bd. Pat. App. & Int. 1993) (rejecting an Examiner's argument that was very similar to the position taken in the Final Office Action).

Thus, there is no basis under the law for the Examiner's comments and objections regarding Applicants' claim to priority for all three parent applications. Therefore, Applicants request that these comments and potential objections be withdrawn and/or stricken from the record of this case.

## 2. Figure 2 Drawing

The Examiner's objections to the amendment to Figure 2 illustrate the Examiner's obstructionist practices, a fundamental misunderstanding of Applicants' invention, and a fundamental misunderstanding of the disclosure in Applicants' specification.

Figure 2 discloses an embodiment that does not require an additional patch of material to serve as a landing member, while Figure 1 discloses such an additional patch. The Examiner however, refused to accept this clear distinction between the two figures. Thus, as with the priority claim, the Examiner embarked on a predisposed path of objections, comments and obstruction in an attempt to force applicants to change Figure 2. It appears that Applicants have ultimately prevailed upon this issue, however, not without the Examiner making a final comment, in her Advisory Action, by suggesting that an amendment is needed to clarify the specifications. In her final comment the Examiner provides:

If Applicants maintains the request to have Figure 2 approved as proposed 9-30-02 the nature of the invention shown in Figure 2 would be much clearer if on page 4, line 2, after "panel", --, see Figure 2 – could be inserted.

(Attached hereto as Exhibit B is a compendium of the Examiner's comments and Applicant's response thereto on this issue; Figure 1 and Figure 2 as amended and accepted are attached as Exhibits C and D respectively).

The Examiner's parting comment is ambiguous and places a cloud over Applicants' case. There is no ambiguity in the specification and Applicants request the approval of Figure 2 (as submitted on 9-30-02), without any changes to the specification. Moreover, the Examiner's gratuitous comment that "the nature of the invention shown in Figure 2 would be much clearer" is totally improper. This comment has no basis in fact or law. At

most it appears to be a face saving comment by the Examiner in view of the clear disclosure of the specification (See Exhibit B). The Examiner's face saving comment however has no place in Applicants' file history. Even though it does not relate to patentability, it may nevertheless have unforeseen consequences in later prosecutions and/or litigations. Accordingly, as that comment has no legal or factual basis Applicants request that it be withdrawn and stricken from the record.

### 3. Usage of Trademarks in Specification

The Examiner objected to Applicants' use of trademark terms that appeared in the specification in lower case followed by the trademark symbol, such as "Velcro ®". The Examiner's objection expressly required that this term "should be capitalized wherever it appears . . ." (pp. 2-3 of March 27, 2002 Office Action (bold added)) Applicants thus followed the express requirement of the Examiner and amended the term to provide "VELCRO ®." The Examiner then objected to this term because it was capitalized. (Attached hereto as Exhibit E is a compendium of the Examiner's comments and Applicants' response thereto on this issue).

This as with the other objections and comments by the Examiner illustrates the obstructionist practices of the Examiner. These practices are improper and in addition to greatly increasing Applicants' cost have the potential to place a cloud over the prosecution history.

Moreover, in addition to contradicting an earlier objection and instruction, the Examiner's present objection to the use of capitalization and the trademark symbol has no basis in the law (U.S.C. Title 35 and C.F.R. § 37) or in the guidance provided by the M.P.E.P.

The patentee is his or her own lexicographer and therefore is permitted to properly characterize the ownership and source of goods used in the Applicants' disclosure. The Applicants' use of capitalization and the ® was required by the Examiner. It in no way diminishes the strength of the trademark owner's mark. It is fully consistent with the requirement of M.P.E.P. § 608.01(v) that: "[e]very effort should be made to prevent their use in any manner which might adversely affect their validity as trademarks." MPEP § 608.01(v). Finally there is no statutory basis for the Examiner to now require Applicants to change such usage.

Upon further investigation, Applicants have amended the form of the marks not registered as trademarks that were improperly referenced in the Applicants' specification. (See Exhibit 1 attached hereto).<sup>1</sup> Applicants request entry of this amendment.

Thus Applicants request the Examiner's objections and comments regarding trademark usage be withdrawn and stricken from the file history.

#### **4. Claim commensuration under MPEP §§ 608.01 (d) and 1302.01**

In the Final Office Action, the Examiner provided a series of comments and objections. These assertions to a certain extent appeared to be the recasting of other comments and objections. In other cases they appear to be unrelated and new criticisms of Applicants' specifications and or the invention described therein. In either case they were unfounded as a matter of law and fact.

Thus, for example, the Examiner asserted that Applicants failed to provide a "clear consistent description of the limits" of the invention. (See Final Office Action, p. 4). In the Final Rejection, the Examiner asserted that "2) different numerals 5 and 51 are now used to describe the same structure, i.e., the front end fastener, i.e., a square like that shown in Figure 1B labeled 5 should be shown in Figure 2 and the description thereof on page 29 amended accordingly" has no basis in fact and evidences a fundamental misunderstanding of Applicants' specification, invention and the technology at issue. (See Final Rejection, p.4). Again, Applicants repeat that a separate patch of material is not intended or needed in Figure 2. As such, the Examiner's objection should be withdrawn. (Attached hereto as Exhibit F is a compendium of the Examiner's comments and Applicants' response thereto on this issue).

In the Advisory Action, the Examiner did not specifically address Applicants' arguments to those comments and objections in a manner which Applicants can respond. It is unclear whether the Examiner intended to maintain those previous comments and objections, made new assertions or choice some middle ground. Under any scenarios however, they are unfound and should be withdrawn and stricken from the record. (See Applicants' arguments Exhibit F at page 19).

---

<sup>1</sup> As a matter of public record, the amendment to the specification was not for the purposes of patentability or an abandonment of any protection available under the claims

### CONCLUSION

Applicants and the public are entitled to a clear prosecution record. The Examiner in this case has not met that obligation. Accordingly, for the reasons stated above, Applicants request that the comments and objections made by the Examiner be withdrawn and/or stricken from the record of this file history.

Respectfully submitted,



Rashida Y.V. MacMurray  
Registration No. 50,399  
Attorney for Applicants

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200

**EXHIBIT 1****Amendments to the Specification are as follows:**

**Please amend the paragraph beginning on page 15, line 17 and ending on page 16, line 17 as follows:**

Breathable members have a water vapor transmission rate (WVTR) that is equal to or greater than 500 g/m<sup>2</sup>/24 hours. Ideally, breathable members have WVTR of equal to or greater than 1000 g/m<sup>2</sup>/24 hours. Optimally, breathable members have WVTR of equal to or greater than 2000 g/m<sup>2</sup>/24 hours. Such materials may be used, for example as a backing member. Materials having a WVTR as high as 8,000 g/m<sup>2</sup>/24 hours or greater may be used for side panels. The WVTR is calculated in accordance with ASTM Standard E96-95. Thus, circular samples measuring three inches in diameter are cut from each of the test materials and from a control, which is a piece of CELGARD® 2500 film from Hoechst Celanese Corporation of Sommerville, New Jersey. CELGARD® film is a microporous polypropylene film. Three samples are prepared for each material. The test dish is number 60-1 Vapometer pan distributed by Thwing-Albert Instrument Company of Philadelphia, Pennsylvania. One hundred milliliters of water is poured into each Vapometer pan and individual samples of the test materials and control materials are placed across the open tops of the individual pans. Screw-on flanges are tightened to form a seal along the edges of the pan, leaving the associated test material or control material exposed to the ambient atmosphere over a 6.5 centimeter diameter circle having an exposed area of approximately 33.17 square centimeters. The pans are placed in a forced air oven at 100°F (32°C) or 1 hour to equilibrate. The oven is a constant temperature oven with external air circulating through it to prevent water vapor accumulation inside. A suitable forced air oven is, for example, a Blue M POWER-O-MATIC Blue M POWER-O-MATIC® 60 oven distributed by Blue M. Electric Company of Blue Island, Illinois. Upon completion of the equilibration, the pans are removed from the oven, weighed and immediately returned to the oven. After 24 hours, the pans are removed from the oven and weighed again. The preliminary test water vapor transmission rate values are calculated with Equation (1) below:

(I) Test WVTR = (grams weight loss over 24 hours) x 315.5 g/M<sup>2</sup>/24 hours. The relative humidity within the oven is not specifically controlled

**Please amend the paragraph beginning on page 22, line 20 and ending on page 23, line 2 as follows:**

Alternately, the backing member may comprise a nonwoven, fibrous web which has been suitably constructed and arranged to have low aqueous liquid perviousness. Still alternately, the backing member may comprise a layered or laminated material, such as a thermally bonded plastic film and nonwoven web composite. Alternatively, the backing member consists of an aqueous liquid impervious film or foam which is pervious to water vapor under normal wearing conditions. The backing member may

have a water vapor transmission rate of at least about 800 grams/m<sup>2</sup>/24 hours measured by ASTM E96-92. One example of a suitable film is a 39.4 grams per square meter microporous film produced by Mitsui and sold by Consolidated Thermoplastics (CT) under the trade name of ~~ESPOIR® N-TAF-CT~~ ESPOIR® n-taf-ct.

**Please amend the paragraph beginning on page 25, line 15 and ending on page 26, line 4 as follows:**

The crotch elastics are sandwiched in-between the backing member and bodyside liners. Alternatively, the crotch elastics may be sandwiched in between the backing member and outer member. They may be held in place by adhesives, ultrasonic bonding, heat, pressure or any other technique known to the art for holding elastic in place. Optimally, by way of example and without limitation they may be held in place by an adhesive placed in a spiral pattern. The elastics may be made from any material known in the art, such as LYCRA® from Dupont, Wilmington, Delaware or GLO SPAN Glo Span from Globe Manufacturing Company, Fallriver, Massachusetts. The elastics may be in ribbon form, sheet form, string form, yarn form, or any other type. They may also be heat activated. Ideally, they consist of 3 strands of LYRCA® having a decitex of about 940. Although 3 strands of crotch elastic are shown in the Figures, it is understood that more or less may be used. Further examples of the types of elastics and the manner in which they are affixed are provided in Heran et al. U.S. Patent No. 4,642,362, Strohbeen et al. U.S. Patent No. 4,610,681 and Ales et al. U.S. Patent No. 4,639,949, the disclosures of which are herein incorporated by reference. Further, the crotch elastics may extend along the leg cut out and into the area of the back of the chassis. In this way, crotch elastics may extend to or past the point where the side panels are joined to the chassis.

## EXHIBIT A

### **Claim of Priority to '951 parent application**

#### **EXAMINER'S OFFICE ACTION DATED MARCH 27, 2002, p. 2**

##### **ITEM 2**

On page 1, lines 5-7 Applicants claim the benefit of priority (in the declaration under 35 USC 120) of two co-pending applications with different inventive entities but at least one common co-inventor. The relationship i.e. continuation, CIP or divisional is lacking. What is the relationship?

#### **APPLICANTS' RESPONSE DATED SEPTEMBER 30, 2002, p. 13**

##### **ITEM 2.**

On Jan. 24, 2002 Applicants filed a preliminary amendment and request for corrected filing receipt addressing the issues of the patents genealogy. A corrected filing receipt has subsequently been issued in this case which correctly reflects the patent genealogy. Thus, the issues raised by Item 2 of Office Action have been addressed.

#### **EXAMINER'S OFFICE ACTION DATED JULY 1 2003, p. 2**

##### **ITEM 1**

Applicants have not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 USC 120...The disclosure of the invention in the [09/215,951] parent application does not appear to be the same as the disclosure of the invention of the instant application, e.g. where is the length of the side panel with respect to the chassis as claimed in claim 6 of the instant application set forth in the ['951] application? It is noted that Applicant's remarks in the 9-30-02 response, items 8 and 9, did not point out the support for the invention of the instant application with regard to the ['951] application. Therefore, with regard to the ['951] application Applicants have not complied with one of conditions for receiving benefit of that application's filing date.

#### **APPLICANTS' RESPONSE DATED AUGUST 29, 2003 p. 5**

##### **ITEM 1**

The Examiner's reference to item 8 of Applicants' September 30, 2002 Response is misplaced. Item 8 was directed to a very specific objection in the Examiner's March 27, 2003 Office Action. [Item 8] was not directed to general claim of priority to the various parent applications... To the contrary, item 2 of Applicants' September 20 Response was directed toward and fully answered the Examiner's general inquiries about Applicants' priority claim. The Examiner has not disputed Applicants' positions as set forth in Item 2 of Applicants' September 30, 2002 Response. Moreover, the Examiner's present challenge to Applicants' claim of priority is an entirely new matter that has never before been raised and as such is not proper in a Final rejection. Additionally, each of the three parent applications to which Applicants'

claim priority is expressly incorporated by reference into the disclosure of the present application.

**EXAMINER'S ADVISORY ACTION DATED SEPTEMBER 23, 2003, p. 2**

**ITEM 1**

With regard to the second paragraph of the reference to Item 8 was not misplaced but used to show that the '951 application did not appear to include the length of the side panel as claimed, i.e. Applicants did not reference such. Furthermore, the Examiner never stated that such was considered a claim of priority. The Applicants' response in Item 8 is not disputed because it pointed out support in the specification as well as in the '865 application and '866 application for the claimed specifics. With regard to third paragraph Examiner did not challenge the claim of priority but rather pointed out that thereby such claim did not appear to be perfected with regard to '951 application. No requirement or response of any kind was made of Applicants. Applicants' could change the claim of priority to one in which this application is a CIP of the '951 application or not, Applicant could point out where there is support in the '951 application or not. The effective filing date of the application remains 12-18-98 due to perfected claim of priority with respect to the '865 and '866 applications. Furthermore, the final was not premature because such issue was raised in the first action paragraph 8 thereof with regard to fourth and fifth paragraphs, it appears that Applicants are making the argument that since the that since the '951 application was incorporated into the '866 and '865 applications and all three are incorporated into the instant application... is entitled to claim the benefit from all three. If this is the argument, the Examiner does not disagree Applicants may claim the benefit of all three but such claim must be perfected as set forth in MPEP 201 with regard to each to be entitled to the benefit of each and such entitled is not based on incorporation by reference but rather the six conditions set forth in 201.11.

## EXHIBIT B

### Figure 2 Drawing

#### EXAMINER'S OFFICE ACTION DATED MARCH 27, 2002, p.2

##### ITEM 4

The drawings are objected to because in Figure 1A, the top layer of the chassis designated 15 and 12 and the absorbent pad is not designated 12. Element 5 in Figures 1B and Figure 2 are not consistent. Element 1 shown in Figures 1A and 1B and that in Figure 3 are inconsistent. A proposed drawing correction or corrected drawings are required in reply to the Office Action to avoid abandonment of the application.

#### APPLICANTS' RESPONSE DATED SEPTEMBER 20, 2002, pp.13-14

##### ITEM 4

Applicants have amended Figure 1 so that 12 now appear with dashed lines to indicate that it is underneath 15. Figure 2 and the corresponding disclosure in the specification have been amended to change the designation for the front panel from 5 to 51. In figure 5 the outer member servers as the fastening panel. Support for this embodiment is expressly found at page 4, line 2, and in the drawing of figure 2, as originally submitted. (Designation 51 is not used in any other figure). Plaintiffs have amended Figure 3 and the corresponding text in the specification to change the designation from 1 to 111. (Designation 111 is not used in any other figure). Thus, Applicants have overcome the objections to the drawings set forth in Item 4.

#### EXAMINER'S OFFICE ACTION DATED JULY 01, 2003, p. 3

##### ITEM 2

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 9-30-02 have been approved in part (Figures 1A and 3 only). A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance. . The drawing change proposed for Figure 2 was not approved because such gave two different designations to the same front end fastener.

See discussion infra.

##### ITEM 3

The drawings are objected to because element 5 in Figures 1B and 2 are not consistent, i.e. a square like that shown in Figure 1B should be labeled 5 in Figure 2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

**APPLICANTS' RESPONSE DATED AUGUST 29, 2003, p. 7****ITEM 3**

The Examiner's objection to the amendment to Figure 2 shows a fundamental misunderstanding of Applicants' invention, the disclosure in Applicants' specification and Item 4 of Applicants' September 30, 2002 Response. A separate patch of material to serve as a landing member is not part of the embodiment shown in Figure 2. Thus the closure mechanism of Figure 2 works without the need for a separate patch of material, i.e. the patch of material shown as number 5 in Figure 1D is not needed nor intended to be in Figure 2. Moreover, support for the drawing of Figure 2, without a separate patch of material, is expressly found at page 4, line 2 of the specification, which provides: "alternatively, an outer member may serve as the fastening panel." Thus, contrary to the Examiner's assertion, a drawing of Figure 2 is not required or intended to have a "separate square like that shown in Figure 1B." Such a separate square is not needed for the closure mechanism to function. . . Accordingly, amended Figure 2, which does not show a separate material, is correct as drawn.

**EXAMINER'S ADVISORY ACTION DATED SEPTEMBER 23, 2003, p.3****ITEM 3**

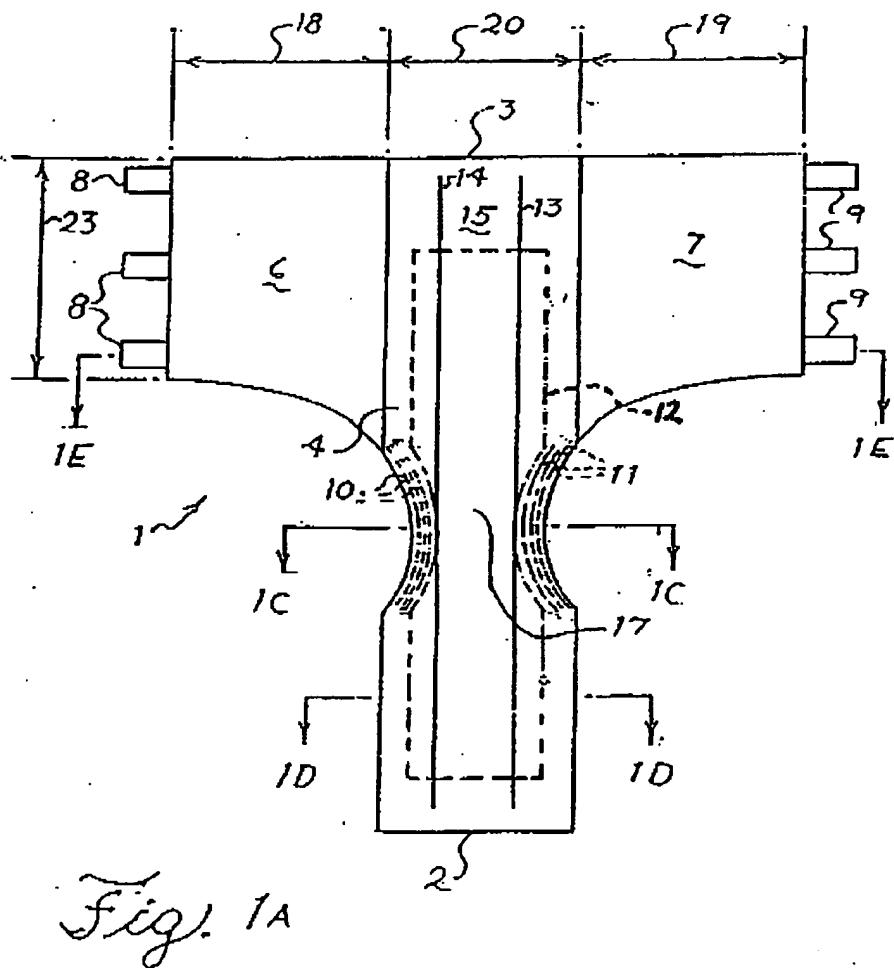
- With regard to Item 3 and Item 5, second full paragraph, the understanding of the invention is based on the disclosure of the invention in the specification. Applicants have not described the front fastening panel in Figure 2 as being a different embodiment nor pointed out such at the disclosure on page 4, line 2, which line is a description of the fastener 5. The Examiner's objection to the proposed Figure 2 in paragraph 2 of the FINAL, the objection to the originally filed drawings in paragraph 3 of the FINAL and the objection to the original specification as amended 9-30-02 in paragraph 4, item 2), of the FINAL are based on such description. If Applicant maintains the request to have Figure 2 approved as proposed 9-30-02 the nature of the invention shown in Figure 2 would be much clearer if on page 4, line 2, after "panel", --, see 51 in Figure 2 – could be inserted.

**EXHIBIT C****Figure 1A Drawing**

Patent Appl. for. FULL WRAPPING DISPOSABLE REFASTENING AND ADJUSTABLE PANT  
Inventor(s): Datta et al.  
Attorney Docket No.: 659-829 & Kimberly Clark Ref. No. 14-104-1

CORRECTED SHEET

Sheet 1 of 5

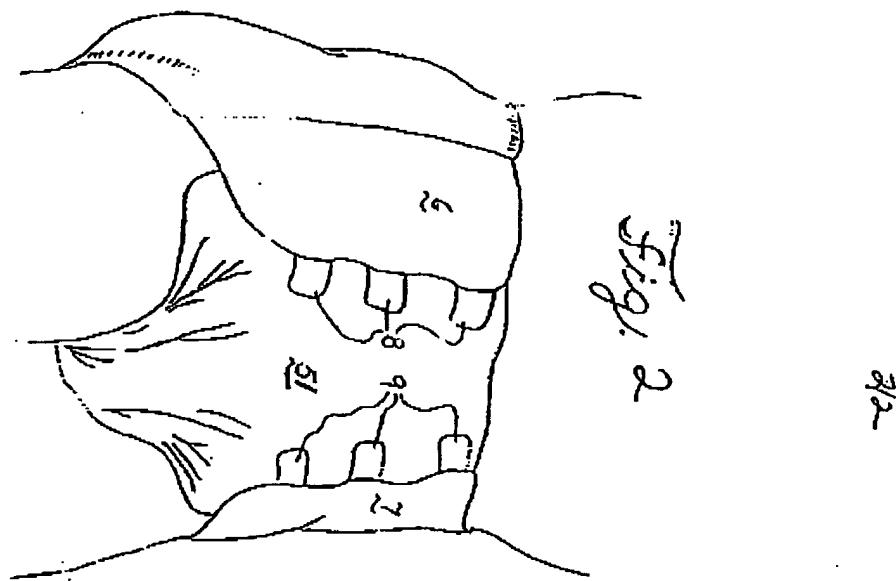


## EXHIBIT D

Figure 2 Drawing (Amended 9-30-02)

Patent Application For: FULL WRAPPING DISPOSABLE  
REFASTENABLE AND ADJUSTABLE PANT  
Inventor(s): Datta et al.

Sheet 4 of 5



## EXHIBIT E

### Usage of Trademarks in Specification

#### **OFFICE ACTION DATED MARCH 27, 2002, pp.2-3**

##### **ITEM 5**

The use of the trademark Kraton ® (pages 8, 12), CELGARD TM (pages 15-16), Telfon TM (page 19), S/P TM Certified Blood Saline (page 20), ESPOIR ® N-TAF-CT (page 23), LYCRA ® (pages 25-27) Velcro ® (page 28) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

#### **APPLICANTS' RESPONSE DATED SEPTEMBER 20, 2002, p.14**

##### **ITEM 5**

The specification has been reviewed and correction made to the usage of all trademarks to respect the nature of those marks. In all instances, the reference to a trademarked product is an example of a generic type of component that has been disclosed and described.

#### **EXAMINER'S OFFICE ACTION DATED JULY 01, 2003, pp. 3-4**

##### **ITEM 4**

The use of the trademark KRATON(R)(pages 8 and 12), CELGARD (R)(pages 15-16), TEFLON(R)(page 19), S/P(R) Certified Blood Saline (page 20), ESPOIR(R)N-TAF-CT(page 23, LYCRA(R)(pages 25-27), VELCRO(R)(page 28), BRANSON(R) and DUKANE(R)(page 5) and TRITON(R)(page 25) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

#### **APPLICANTS' RESPONSE DATED AUGUST 29, 2003, p.8**

##### **ITEM 4**

Applicants' attorney has reviewed Title 35 of the United States Code and Title 37 of the Code of the Federal Register and can find no legal basis for the Examiner's assertion that use of capitalization in conjunction with an "®" is improper. The Examiner points to no such authority. Applicants' use of capitalization and the ®, fully meets the requirements of the MPEP, which provides that:

Trademarks should be identified by capitalizing each letter of the mark (in the case of word or letter marks) .... Every effort should be made to prevent their use in any manner which might adversely affect their validity as trademarks. MPEP § 608.01(v)(emphasis added).

Applicants' use of capitalization and the trademark symbol clearly is the use of "every effort" to protect these marks. It is appropriate, it was required by the Examiner in the March 27, 2002 Office Action, and there is no legal or statutory basis under which the Examiner can maintain an objection to it.

**EXAMINER'S ADVISORY ACTION DATED SEPTEMBER 23, 2003, pp. 3-4**

**ITEM 4**

With regard to Item 4, the Examiner's authority is 608.01(v) as set forth in the objection, i.e. "Trademarks should be identified by capitalizing each letter of the mark... or otherwise indicating the description of the mark... in the form of a symbol...). Furthermore, the form paragraph used by the Examiner did not tell the Applicants to use capitalization and the trademark symbol together.

## EXHIBIT F

### Claim commensuration under MPEP §§ 608.01(d) and 1302.01

#### EXAMINER'S OFFICE ACTION DATED MARCH 27, 2002, pp. 3-4

##### ITEM 7

The disclosure is objected to because of the following informalities: 1) The Summary of the Invention Section, i.e. a description of the claimed invention, and the invention as claimed, i.e. claims 1-8 and 10 -14, are not consistent in scope, see MPEP 608.01 (d) and 1302.01 2) The numeral 1 is used to denote different structure in Figures 1A, B and Figure 3.3. 3) Page 2, lines 2-3 and 8-10 and claims 4-5 and 7-8 which don't set forth an upper limit of about 1,500g or about 250g, and page 3, lines 27-30 which set forth upper limits are inconsistent, i.e. what about the upper limit? 4) On page 2, last line "113" should be -1B-. 5) On page 4, line 11, "width" should be - widths-. 6) On page 4, line 5, what are the "3" elastic panels? 7) On page 10, lines 26 et seq. what is the application or patent number? 8) Is "Blue M Power O Matic (page 16) a trademark? 9 The incorporation by reference should be checked for propriety, i.e. no essential material incorporated by reference to foreign patents or applications or U.S. Patents or applications which themselves incorporate such material. Appropriate correction is required.

#### APPlicants' RESPONSE DATED SEPTEMBER 30, 2002, pp.14-15

##### ITEM 7

The summary of the invention section has been amended to overcome the objection. The usage of the numeral 1 in Figures 1 and 3 has been corrected. Applicants have reviewed page 3, lines 27-30, which disclose the structural elements of an embodiment of the invention. That section of the disclosure does not relate to the maximum amount or upper limit that the article may hold. Thus, there is no inconsistency between page 2, lines 2-3 and page 3 lines 27-30. Those disclosures relate to different aspects of the article. Moreover, the upper limit depends upon the over all construction and shape of the article. Applicants provide teaching and examples of various upper limits that can be obtained. There is no basis under 35 U.S.C. § 112 for the examiner to object to this description and characterization of the invention. With respect to page 4, line 11, the specification has been corrected. With respect to page 4, line 5, the specification has been corrected. With respect to the application on page 10 the specification has been amended to reference the serial number and filing date. With respect to page 16, it is not believed that Blue M Power-O-Matic 60 is a trademark. Applicants believe that its incorporation of applications by reference is proper.

**EXAMINER'S OFFICE ACTION DATED JULY 01, 2003, p. 4****ITEM 5**

The disclosure is objected to because of the following informalities: 1) The Summary of the Invention Section, i.e. a description of the claimed invention, and the invention as claimed, i.e. claims 1-8 and 10-14, are still not commensurate, see MPEP 608.01(d) and 1302.01. 2) Different numerals 5 and 51 are now used to describe the same structure, i.e. the front end fastener, i.e. a square like that showing in Figure 1B labeled d4 should be shown in Figure 2 and the description thereof on page 29 amended accordingly. 3) Page 2, lines 2-3 and second full paragraph and claims 4-5 and 7-8 don't set forth an upper limit of about 1500g or about 250g while page 19, lines 11-18 does. A clear consistent description of the limits should be set forth. Appropriate correction is required.

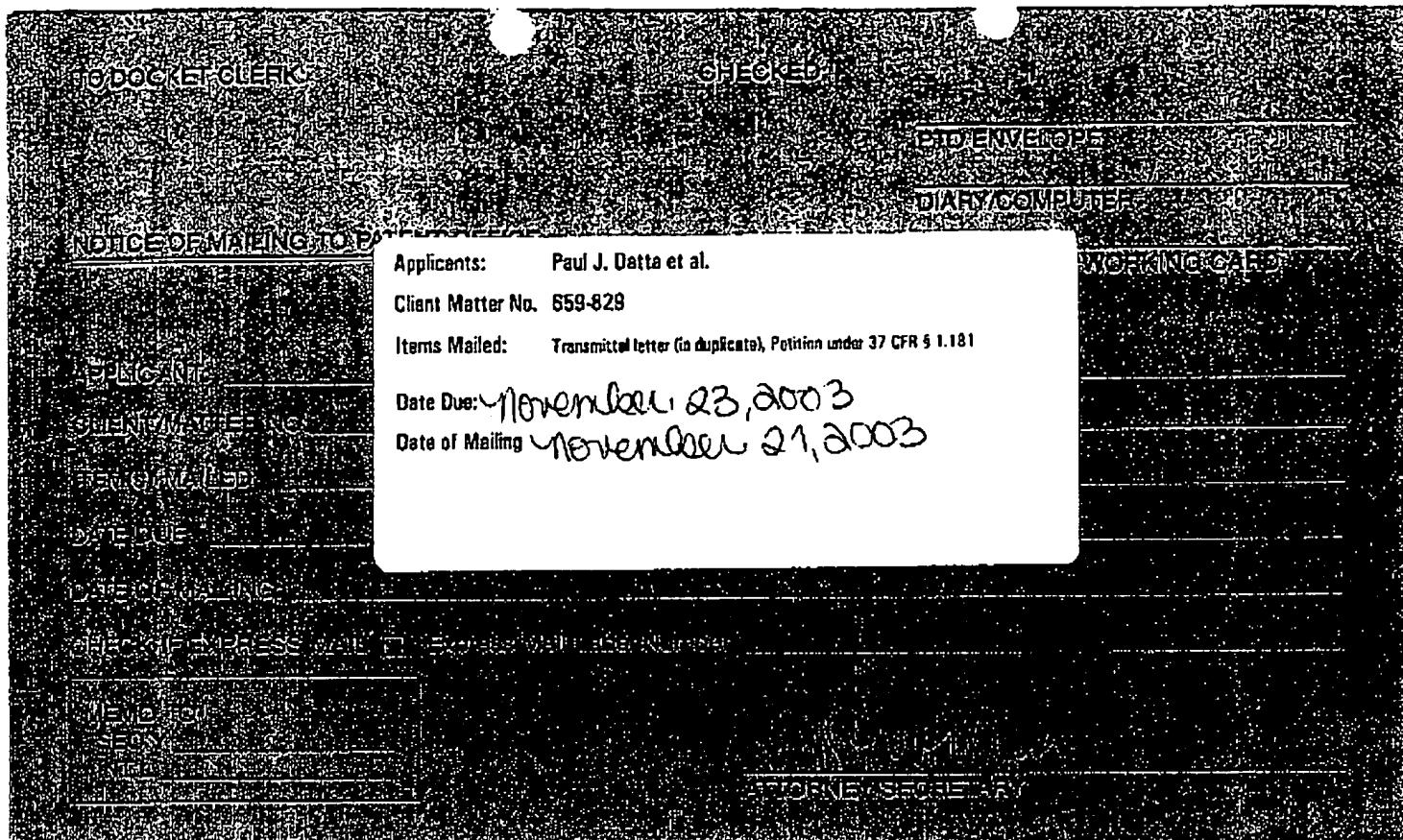
**APPLICANTS' RESPONSE DATED AUGUST 29, 2003, pp. 9-10****ITEM 5**

The Examiner, having provided Applicants' with no basis for this objection, has left Applicants to speculate as to that basis in order to respond. Such speculation is entirely improper and unfair. . . The Examiner's assertion that "2) different numerals 5 and 51 are now used to describe the same structure, i.e., the front end fastener, i.e., a square like that shown in Figure 1B labeled 5 should be shown in Figure 2 and the description thereof on page 29 amended accordingly" has no basis in fact and evidences a fundamental misunderstanding of Applicants' specification, invention and the technology at issue has no basis in fact and evidences a fundamental misunderstanding of Applicant's specification, invention and the technology at issue. As set forth in detail in Item 3 above, a separate patch of material is not intended or needed in Figure 2.

As such, the Examiner's objection should be withdrawn. A clear consistent description of the limits should be set forth provides no basis for the Examiner's objection. In fact, it can not be ascertained from the Office Action what statutory provision forms a basis for the Examiner's assertion. The Examiner's assertion appears to be based upon the Examiner's lack of understanding of this technology, Applicants' claimed invention and Applicants' specification.

**EXAMINER'S ADVISORY ACTION SEPTEMBER 23, 2003, p.4****ITEM 5**

With regard to item 5, first paragraph, first the Examiner's objection is not correctly quoted and second the Examiner did set forth the basis for the objection, i.e. both the MPEP sections relied on as well as the claims whose invention are not deemed to commensurately described in the Summary section are set forth. With regard to the third and fourth paragraphs of the arguments, Examiner understands the technology but due to the inconsistent description of the invention [it] is not clear as to what the range of the total capacity of the pad is. It is noted that, on the third line from the bottom page 4, "250" should be -25-. The Examiner again apologizes for the typing error.



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Case No. 658-829  
Applicants: Paul J. Datta et al.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Please acknowledge receipt of the below-identified:  
Transmittal letter (in duplicate), Petition under 37 CFR § 1.181

BRINKS HOFER GILSON & LIONE Rashida Y.V. MacMurray/lni  
Dated: November 21, 2003 (R.Y.)

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NOTICE OF MAILING TO P

Case No. 659-829  
Applicants: Paul J. Datta et al.  
Commissioner for Patents  
P.O. Box 1650  
Alexandria, VA 22313-1650

Please acknowledge receipt of the above identified:  
Transmittal letter (in duplicate). Petition under 37 CFR § 1.181  
BRINKS HOFFER GASKIN & LORNE  
Rashida Y.V. MacMurray/jml  
Date: 10/13/2006 213003

